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CHARLES T. HARRIS, JR.
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IN THE
Supreme Court of the United States
October Term 1945.

No. 370

NATIONAL ELECTRIC PRODUCTS
CORPORATION,

Petitioner,

vs.

TRIANGLE & CONDUIT CABLE CO., INC.

Respondent.

**BRIEF FOR RESPONDENT IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI.**

SAMUEL E. DARBY, JR.,
Counsel for Respondent.

FLOYD H. CREWS,
Of Counsel.

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**BRIEF FOR RESPONDENT IN OPPOSITION
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This is a patent infringement suit involving the usual issues of validity and infringement.

The patents involved were held to be invalid by the District Court for the District of Delaware and by the majority of the Third Circuit Court of Appeals below. There has been no other adjudication of the patents and, therefore, there is no diversity of opinion with respect to them. Accordingly, the petition should be denied. (*Layne and Bowler Corp. v. Western Well Works*, 261 U. S. 387, 393; *Keller v. Adams Campbell Co.*, 264 U. S. 314, 319; *General Talking Pictures Corp. v. Western Electric Co.*, 304 U. S. 175, 178-179.)

The highly fanciful puffing of the patents in the petition, and the asserted question of law used as a pretext for arguing the merits, are both based upon the theory that the pat-

ents disclose a new combination of elements. This is not the fact. The District Court said (R. 420):

"I therefore find that patent No. '555 is invalid, first because anticipated by Roberts' British patent [R. 322] and second, if not fully anticipated, then because such slight and immaterial novelty as it presents does not involve an inventive advance.

"The second Robinson and Moore patent '556 falls with the first. Even if the first were valid, the selection of such a well-known material as it describes could not, in my judgment, possibly constitute invention."

The Court of Appeals said (R. 489):

"The Roberts patent effectively negatives any novelty in the Robinson and Moore patents and is clearly an anticipation thereof."

The question of law presented in the petition is therefore not present in the case.

Conclusion.

The petition should be denied.

Respectfully,

SAMUEL E. DARBY, JR.,
Counsel for Respondent.

FLOYD H. CREWS,
Of Counsel.

Dated: New York, N. Y.
August 28, 1945.

